

Message Text

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EXCON

E. O. 11652: N/A
TAGS: ESTC YO
SUBJECT: YUGOSLAV LEGISLATION ON LONG-TERM BUSINESS COOPERATION AND US EXPORT CONTROL REGULATIONS

REF: A) STATE 166161, B) BELGRADE 5023

1. EMBASSY ECON/COMM OFFICERS MET WITH OFFICIAL OF FEDERAL COMMITTEE OF ENERGY AND INDUSTRY TO DISCUSS NEW JOINT VENTURE LAW AND REGULATION ON LONG-TERM BUSINESS COOPERATION WHICH INCLUDES LICENSING OF TECHNOLOGY. OFFICIAL NOTED THAT REGULATION WOULD SOON BE SUPERCEDED BY MORE COMPREHENSIVE LEGISLATION ON LONG-TERM COOPERATION BUT THAT MANY OF THE PROVISIONS WOULD BE THE SAME. (COMMENT: NEW LEGISLATION WAS IN FACT PASSED TWO DAYS LATER ON JULY 12 AND CONTAINS SAME PROHIBITIONS ON RESTRICTION OF IMPORTS. FURTHER ANALYSIS FOLLOWS IN PARA 3). HE SAID THAT IT IS UNLIKELY THAT ANY KINDS OF RESTRICTIONS ON EXPORTS WOULD BE PERMITTED IN JOINT VENTURE OR LICENSING AGREEMENTS THAT ARE FILED WITH THE COMMITTEE. OFFICIAL YUGOSLAV FOREIGN TRADE POLICY SUPPORT UNRESTRICTED TRADE WITH ALL
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COUNTRIES (RHODESIA AND SOUTH AFRICA BEING THE ONLY EXCEPTIONS), AND THE PROVISIONS IN THE JOINT VENTURE AND LONG-TERM COOPERATION LEGISLATION REFLECT THIS POLICY. HE POINTED OUT, HOWEVER, THAT IMPORT OF STRATEGIC PRODUCTS WAS PROBABLY NOT TAKEN INTO CONSIDERATION WHEN THIS LEGISLATION WAS BEING DRAFTED. GOY RECOGNIZES THAT THE TRANSFER OF CERTAIN KINDS OF SENSITIVE TECHNOLOGY AND

PRODUCTS WOULD OCCUR ONLY UNDER MORE RESTRICTIVE CONDITIONS, INCLUDING LIMITATIONS ON EXPORTS. IT IS THEREFORE PREPARED TO CONDONE COMMITMENTS MADE OUTSIDE OF THE CONTRACT BY THE YUGOSLAV PARTNER OR LICENSEE. THE COMMITMENT MADE BY ISKRA TO OFFICE OF EXPORT ADMINISTRATION WOULD SEEM TO FALL INTO THIS CATEGORY.

2. GIVEN THE CLEAR LANGUAGE IN THE JOINT VENTURE LAW AND LONG-TERM COOPERATION REGULATION (ALSO THE NEW LAW), AS WELL AS PUBLICLY STATED GOVERNMENT POLICY ON UNRESTRICTED EXPORTS, IT IS QUESTIONABLE WHETHER COMMITMENTS MADE OUTSIDE THE JOINT VENTURE OR LICENSING CONTRACT, BE THEY WRITTEN OR ORAL, WOULD BE ENFORCEABLE IN A COURT OF LAW. CONSEQUENTLY, EVEN THOUGH GOY MAY UNOFFICIALLY SUPPORT RESTRICTIONS ON EXPORTS OF PRODUCTS CONSIDERED STRATEGIC BY USG, IT MAY BE RELUCTANT OR WITHOUT LEGAL RECOURSE TO PREVENT EXPORTS TO RESTRICTED COUNTRIES. IT IS ALSO POSSIBLE THAT US PARTNER COULD BE SUED FOR BREACH OF CONTRACT IF IT REFUSES TO CONTINUE SUPPLYING TECHNICAL ASSISTANCE, KNOW-HOW OR COMPONENTS BECAUSE THE YUGOSLAV PARTNER IS EXPORTING TO RESTRICTED COUNTRIES. US FIRMS COULD THEN BE FACED WITH DILEMMA OF INCURRING LEGAL ACTION FROM USG IF IT CONTINUES TO COOPERATE WITH YUGOSLAV ENTERPRISE AND SANCTIONS FROM YUGOSLAV AUTHORITIES IF IT DOESN'T. THIS IS UNLIKELY TO OCCUR IN MOST JOINT VENTURE OR LICENSING AGREEMENTS INVOLVING PRODUCTION OF STRATEGIC LIMITED OFFICIAL USE

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PRODUCTS BECAUSE YUGOSLAV ENTERPRISE WILL BE DEPENDENT ON IMPORT OF COMPONENTS OR SUB-SYSTEMS CONTROLLED BY END-USE CERTIFICATE IN WHICH CASE ENTERPRISE COULD NOT EXPORT FINAL PRODUCT WITHOUT USG PERMISSION. WE WOULD NOT HAVE THIS CONTROL, HOWEVER, IN AGREEMENTS INVOLVING ONLY TRANSFER OF KNOW-HOW AND TECHNICAL SERVICES.

3. ARTICLE 37, PARA 1 OF THE NEW LAW ON LONG-TERM COOPERATION, WHICH GOES INTO EFFECT 30 DAYS AFTER IT IS PUBLISHED IN THE OFFICIAL GAZETTE (PROBABLY ABOUT SEPTEMBER 1), CONTAINS SAME PROHIBITION ON EXPORT RESTRICTIONS. IN CONTRAST TO THE CURRENT REGULATION, HOWEVER, IT PROVIDES FOR EXCEPTIONS TO BE GRANTED TO THIS AND OTHER PROHIBITIONS IN THE CONTRACT IF THEY DO NOT RESULT IN ANY "DAMAGING CONSEQUENCES". WHILE THE COMMITTEE COULD PROBABLY USE THIS EXCEPTION TO PERMIT RESTRICTIONS ON EXPORTS OF STRATEGIC PRODUCTS, IT APPARENTLY HAS NO INTENTION OF DOING SO AT THIS TIME.

4. IN SUMMARY, THE NEW JOINT VENTURE LAW AND LONG-TERM COOPERATION REGULATION (AND LAW WHEN IT BECOMES EFFECTIVE) RAISES CERTAIN LEGAL COMPLICATIONS REGARDING USG CONTROL

OF STRATEGIC PRODUCT EXPORTS. POST DOES NOT PERCEIVE THIS AS AN IMMEDIATE PROBLEM, HOWEVER, BECAUSE GOY, AS EVIDENCED BY ITS SATISFACTORY COOPERATION ON PROCESSING AND CONTROLLING END-USE CERTIFICATES, HAS SHOWN A RECOGNITION OF THE NEED TO CONFORM TO USG REQUIREMENTS ON STRATEGIC PRODUCTS. GIVEN THE IMPORTANCE WHICH GOY ATTACHES TO GOOD ECONOMIC RELATIONS WITH THE US AND ITS CONTINUED NEED FOR STRATEGIC PRODUCTS AND TECHNOLOGY, WE BELIEVE THAT GOY, EVEN WITHOUT LEGAL AUTHORITY, WILL EXERT PRESSURE ON YUGOSLAV ENTERPRISES TO HONOR COMMITMENTS TO RESTRICT EXPORTS OF THESE PRODUCTS. WITH THAT SAID, WE NONETHELESS SUGGEST THAT THIS MATTER BE DISCUSSED FURTHER WITH YUGOSLAV AUTHORITIES TO AVOID POSSIBLE MISUNDERSTANDINGS IN THE FUTURE. PLEASE ADVISE.
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